IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Scott Lynn Michaelis et al.

Application No.: 10/797,530   Confirmation No.: 4525

Filed: March 10, 2004   Art Unit: 2116

For: SYSTEM AND METHOD FOR MANAGING   Examiner: N. Patel
      CONFIGURATION DATA FOR A MULTI-
      CELL COMPUTER SYSTEM

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed December 27, 2006, Applicant hereby PROVISIONALLY elects the claims of group I (claims 1-10 and 23-29) for continued examination, WITH TRAVERSE. The reasons for traversal of this restriction requirement are discussed further below. In view of the reasons set forth below, Applicant respectfully requests withdrawal of the restriction requirement.

The Examiner has required restriction between the following groups of claims:

Group I: Claims 1-10 and 23-29; and

Group II: Claims 11-22 and 30-36.

Applicant respectfully asserts that the present Office Action fails to establish a prima facie case with regard to the required restriction between the identified groups of claims, and therefore the restriction should be withdrawn, as discussed further below.

In general, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner if restriction is required. M.P.E.P. § 803. As discussed below, the present Office Action has failed to properly establish that the groups I-II are independent or distinct.

A. Failure to Establish Distinctness

The present Office Action asserts that the claims of groups I and II are related as subcombinations disclosed as usable together in a single combination. Applicant respectfully disagrees for the reasons discussed below.

i. Classifications do not support the assertion of distinctness

First, the classification of the claims in the Office Action does not support the assertion of distinctness. Specifically, the Office Action asserts that the claims of group I (claims 1-10 and 23-29) are "drawn to configuration during boot-up, classified in class 713, subclass 1", while the claims of group II (claims 11-22 and 30-36) are "drawn to memory partition classified in class 711, subclass 173", page 2 of the Office Action. Applicant respectfully fails to understand why the claims are grouped into the differing classifications designated by the Examiner for the reasons discussed below.

First, it is unclear why the claims of group I (claims 1-10 and 23-29) are asserted as being drawn to "configuration during boot-up". For instance, independent claim 1 recites:

> A method of managing configuration data for a multi-cell computer system, the method comprising:
> storing configuration data for a given multi-cell computer system to

nonvolatile memory of at least one cell of said given multi-cell computer system; and

    storing a corresponding identifier to said nonvolatile memory of said at least one cell that uniquely identifies the given multi-cell computer system to which the stored configuration data corresponds.

As can be seen, independent claim 1 makes no reference to configuration "during boot-up". Thus, the designation of claim 1 as being drawn to "configuration during boot-up" is not supported by the actual language of the claim.

Further, while the claims of group II (claims 11-22 and 30-36) are asserted as being drawn to "memory partition", it is noted that the claims do not recite "memory partition" but rather recite "a partition of a multi-cell computer system", *see e.g.,* claim 11. Of course, a given partition can include memory. Also, it appears that certain claims of group I are likewise directed to such partitions of a multi-cell computer system. For example, claim 9 (of group I) recites:

    The method of claim 1 wherein said given multi-cell computer system is a partition of a multi-cell computer system, said partition having a plurality of the cells of said multi-cell computer system.

As a further example, claim 26 (of group I) recites, in part, "during a first boot-up process of a multi-cell partition, distributing configuration data for the multi-cell partition to each of the cells of said multi-cell partition, wherein the configuration data is stored to non-volatile memory in each of the cells, and storing to said non-volatile memory of each cell a corresponding identifier that identifies that the configuration data corresponds to said multi-cell partition" (emphasis added). Thus, these claims of group I appear to likewise be directed to memory partition, and thus should not be restricted from the claims of group II on this basis.

Additionally, while the claims of group I (claims 1-10 and 23-29) are asserted as being drawn to "configuration during boot-up", it appears that certain claims of group II are likewise directed to configuration. For example, claim 11 (of group II) recites, in part, "if determined that at least one cell of said given partition has a stored identifier matching said determined unique

identifier for said given partition, using configuration data stored to that cell's nonvolatile memory for configuring the given partition". Further, claim 13 depends from claim 11 and further recites:

> The method of claim 11 wherein said configuration data comprises at least one selected from the group consisting of:
> information identifying a boot path for said given partition, information identifying a device to use as a system console for said given partition, information identifying any tests to run when booting up the given partition, and information identifying resources of said given partition.

Thus, these claims of group II clearly also recite use of configuration data, and claim 13 (of group II) recites that such configuration data may include "information identifying a boot path for said given partition" and/or "information identifying any tests to run when booting up the given partition". Therefore, it appears that the claims of group II are also related to the "configuration during boot-up" as is asserted by the Office Action for group I.

As can be seen above, there is great overlap between the claims of groups I and II, and thus the separate classifications asserted by the Office Action are not supported.

ii. The claims of group I and II are not subcombinations disclosed as usable together

The present Office Action asserts that the claims of groups I and II are related as subcombinations disclosed as usable together in a single combination. Applicant respectfully disagrees with this characterization.

Independent claim 11 (of group II) recites:

> A method of managing configuration data locally within a partition of a multi-cell computer system comprising:
> determining a unique identifier for a given partition of the multi-cell computer system;
> determining if at least one cell in said given partition has an identifier stored to its respective nonvolatile memory that matches said determined unique identifier for said given partition; and

> if determined that at least one cell of said given partition has a stored identifier matching said determined unique identifier for said given partition, using configuration data stored to that cell's nonvolatile memory for configuring the given partition.

Thus, claim 11 is directed to a method of managing configuration data, which comprises a) "determining a unique identifier for a given partition", b) "determining if at least one cell in said given partition" has an identifier stored thereto that matches the determined unique identifier, and c) if the at least one cell has such a matching identifier, using configuration data stored to that cell's nonvolatile memory for configuring the given partition.

Similarly, claims 1 and 4-6 of group I recite:

> 1.   A method of managing configuration data for a multi-cell computer system, the method comprising:
> storing configuration data for a given multi-cell computer system to nonvolatile memory of at least one cell of said given multi-cell computer system; and
> storing a corresponding identifier to said nonvolatile memory of said at least one cell that uniquely identifies the given multi-cell computer system to which the stored configuration data corresponds.

> 4.   The method of claim 2 further comprising:
> determining during a second boot-up process of said given multi-cell computer system a unique identifier of said given multi-cell computer system; and
> determining whether the unique identifier stored to any of said at least one cell matches the determined unique identifier of said given multi-cell computer system.

> 5.   The method of claim 4 further comprising:
> if determined that at least one cell's stored identifier matches the determined unique identifier of said given multi-cell computer system, then determining that such cell's stored configuration data is current for the given multi-cell computer system.

> 6.   The method of claim 5 further comprising:
> if determined that at least one cell's stored configuration data is current, using the determined current configuration data for configuring the given multi-cell computer system.

Thus, similar to claim 11 of group II, the above claims of group I are likewise directed a method of managing configuration data, which includes: a) storing a unique identifier of given multi-cell computer system (which may be a "partition", as recited by claim 9 of group I), b) "determining whether the unique identifier stored to any of said at least one cell matches the determined unique identifier of said given multi-cell computer system", and c) if the at least one cell has such a matching identifier, using that cell's stored configuration data for configuring the given multi-cell computer system.

As can be seen from the above, there is great overlap and similarity between the elements of claim 11 (group II) and those of claims 1 and 4-6 (of group I), which do not support the assertion that the claims are reciting subcombinations disclosed as usable together.

Therefore, in view of the above, Applicant respectfully submits that a proper showing of distinctness has not been established by the current Office Action. And, for at least this reason, the restriction requirement should be withdrawn.
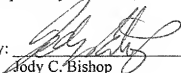
B. No Serious Burden

Further still, there will not be a SERIOUS burden placed on the Examiner if the restriction is not required in the instant case. As shown above, there are many similarities and overlapping elements to be searched and examined in the claims of groups I and II, and thus a search and examination of the claims of one group will not result in a SERIOUS burden on the Examiner in searching and examining the claims of the other group.

C. Conclusion

In view of the above, the present restriction requirement is improper and should therefore be withdrawn.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 08-2025, under Order No. 200313407-1 from which the undersigned is authorized to draw.

Respectfully submitted,

By: _____

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